UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

19. The Respondent USET has an oil reclamation unit located on the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

30. On various dates between June 15, 2008 and the present, certain hazardous wastes were processed in the tanks identified in Paragraph 20.

31. The hazardous waste identified in Paragraph 30 did not meet the definition of "recyclable materials" as that term is defined in 40 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]

because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraphs 30 - 31.

33. The Respondents "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

34. To date, neither the Respondent USET or Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

35. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by processing (treating) hazardous waste without a permit.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

36. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

37. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

38. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

39. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

40. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

41. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

42. On various dates between June 15, 2008 and the present, certain hazardous wastes were fed into the TDU that did not meet the definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

43. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 42.

44. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the

> treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

46. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants and to remove them from the hazardous waste feed material, and transfers them to a gas treatment system using a nitrogen carrier gas. The oil is then recovered by condensing it in the gas treatment system. The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned.

47. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

48. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

49. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

50. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

51. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

52. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

53. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in

accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

54. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

55. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as "any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

56. The TDU is an enclosed device that uses controlled flame combustion.

57. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

58. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion.

59. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. Between on or about March 9, 2010 and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

63. The roll-off boxes identified in Paragraph 62 contained material which was destined for the TDU.

64. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

65. The roll-off boxes identified in Paragraph 62 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

66. To date, the Respondent USET has not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

67. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

III. COMPLIANCE ORDER

68. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution

4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

3. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, interim limits on operating parameter, including, but not limited, to the following:

a. maximum hazardous waste feed rate to the rotary dryer;

b. limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);

c. minimum rotary dryer temperature;

d. maximum gas/vapor flow rate to the Off-Gas Condensing Recovery System;

e. maximum Off-Gas Condensing Recovery System outlet temperature;

f. minimum combustion chamber temperature;

g. maximum gas/vapor flow rate to the combustion chamber;

h. other Off-Gas Condensing Recovery Systems operating parameter limits; and

i. any other operating parameter limits for air pollution control devices used.

The submittal shall include monitoring and recordkeeping requirements. The Respondents shall implement the operating parameter limits as approved or modified by EPA and TCEQ.

4. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

5. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use a carbon monoxide and a hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. These CEMS shall be located in compliance with 40 C.F.R. Part 60, Appendix B requirements for rotary dryer emission point (EP-1) and the combustion chamber emission point (EP-2). The Respondents shall operate the TDU in a manner that the one minute and hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(a).

6. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by EPA and TCEQ.

7. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 68.A.5.

c. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 68.A.4 and 5.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA, an application for a Class 3 RCRA Permit Modification to permit the TDU as an incinerator under Subpart O in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU and oil reclamation unit, including the waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.G;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

d. Any risk-based terms and conditions necessary to protect human health and the environment in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 68.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than two and one-half years (30 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA Subpart O permit for the TDU. In the event that TCEQ and EPA do not issue a final RCRA Subpart O permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

6. Upon the issuance of a Clean Air Act Title V permit to the Respondents and incorporation of the requirements of Subpart EEE for the TDU and the oil reclamation unit into

the Title V permit, the requirements of Subpart EEE may be removed from the RCRA Permit upon request of the permittee(s).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).

2. The Respondents shall make the draft NIC available to the public at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2).

3. The Respondents shall provide notice to the public of a permit modification request pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)], and notice of the NIC public meeting pursuant to 40 C.F.R. § 63.1210(c)(3).

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) days comment period. The information public meeting will also include information related to the risk burn set forth in Paragraph 68.F below. This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c).

5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information. A copy of the Startup, Shutdown, and Malfunction Plan shall also be submitted to EPA.

E. Comprehensive Performance Test (CPT)

1. The Respondents shall perform a comprehensive performance test (CPT) as set forth below. The CPT is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA for approval a complete and approvable comprehensive performance test (CPT) plan and a continuous monitoring system (CMS) performance test plan pursuant to the requirements of 40 C.F.R. §§ 63.7, 63.1207, and 63.1209. The CPT plan shall also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System, the capture efficiency, destruction and removal efficiency, and the actual nature, pattern, and quantity of emissions from EPN EP-2, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.

3. The CPT should be integrated with the Risk Burn described below to produce a consistent set of proposed enforceable permit conditions.

4. The Respondents shall make the CPT plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.

5. The Respondents shall implement the CPT Plan and the CMS performance test plan as approved by TCEQ and EPA, within ninety (90) days after approval of the CPT Plan and the CMS performance test plan. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

6. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(l)(1). The Respondents must make this determination within forty-five (45) days following completion of the CPT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

7. All analyses required by the CPT plan shall be performed by a laboratory pre-approved by TCEQ.

8. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT and the CMS performance test, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the CPT and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation,

monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

9. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

10. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the CPT and the CMS performance test shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

F. Risk Burn

1. To collect emissions data for evaluation in a site-specific risk assessment, as part of its RCRA permit application for the TDU, within one hundred twenty (120) days of the effective date of this CAFO, the Respondents must prepare and submit to TCEQ and EPA for approval, a risk burn plan in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005.

2. The risk burn should be integrated with the CPT to produce a consistent set of proposed enforceable permit conditions.

3. The Respondents shall implement the risk burn plan as approved by TCEQ and EPA within ninety (90) days after approval of the risk burn plan.

4. All analyses required by the risk burn plan shall be performed by a laboratory pre-approved by TCEQ.

5. The risk burn performed by the Respondents shall collect fugitive and stack emissions data and define the operating requirements for the TDU based on control parameters identified in Chapters 4 through 7 of the Risk Burn Guidance for Hazardous Waste Combustion Facilities. During the risk burn, the Respondent shall evaluate each of the constituents in Chapters 4 through 7 of Risk Burn Guidance including the dioxins, furans, other organics, metals, particulate matter, hydrogen chloride, and chlorine identified therein.

6. During the risk burn (or as soon after the burn as is practicable), the Respondents shall make the determinations set forth for the Risk Burn Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities deemed appropriate by the TCEQ. During the risk burn, the Respondent must demonstrate that the emissions from the TDU do not present a risk to human health or the environment.

7. Within one hundred twenty (120) days after completion of the risk burns, the Respondents must submit to TCEQ and EPA a certification that the risk burns have been carried out in accordance with the approved risk burn plans, and must submit the results of all the determinations by the risk burn plan. The Respondents must also submit a complete and approvable Risk Assessment Report consistent with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. All data collected during the risk burns must be submitted to TCEQ and EPA along with the certification.

8. A copy of the risk burn plan shall be made available to the public upon issuance of the notice of public meeting pursuant set forth in Paragraph 68.C.3 above.

9. The failure to timely submit a risk burn certification and the Risk Assessment Report to TCEQ and EPA within one hundred twenty (120) days from completion of the risk burn shall result in the termination of the Respondents' authorization to operate the TDU on that date. unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

G. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas

4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

H. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ and/or EPA approval under this CAFO, TCEQ/EPA will review these applications or plans and issue only one Notice of Deficiency (NOD) to the Respondents. The Respondents must provide an approvable response to TCEQ and EPA within thirty (30) days of receipt of the NOD. In the event that the Respondents fail to submit a timely and good-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline [thirty (30) days from the date of receipt of the NOD].

I. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart O – Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part

264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), and incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE (unless those provisions have already been incorporated into a Clean Air Act Title V permit) and the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA-R-05-006, September 2005.

2. The Respondents may seek relief under the provisions of Section IV.E of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

J. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925, 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R.

§ 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.D of this CAFO.

K. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

71. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

72. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

73. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a

penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

74. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. STIPULATED PENALTIES

75. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 68.A.3, 68.A.6, 68.A.7, 68.C.1, 68.D.1, 68.E.2, and 68.F.1

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 68.A.4 and 68.A.5

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

76. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

77. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

D. DISPUTE RESOLUTION

78. If the Respondents object to any decision or directive of EPA in regard to Section III, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

79. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

80. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

81. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

E. FORCE MAJEURE

82. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

83. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents' first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent from asserting any claim of force majeure.

84. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other

obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

85. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claim was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event.

F. NOTIFICATION

86. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P. :

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

G. MODIFICATION

87. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

H. RETENTION OF ENFORCEMENT RIGHTS

88. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

89. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants,

contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

90. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

91. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

92. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this

CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

I. INDEMNIFICATION OF EPA

93. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

J. COSTS

94. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

K. TERMINATION

95. At such time as the Respondents believe they has completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

L. EFFECTIVE DATE

96. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____

TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

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